

Cammarato v 16 Admiral Perry Plaza LLC

2022 NY Slip Op 33353(U)

October 4, 2022

Supreme Court, Kings County

Docket Number: Index No. 514454/2020

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an I.A.S. Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 4th day of October 2022

HONORABLE FRANCOIS A. RIVERA

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DOROTHY CAMMARATO, Individually and as a Member of 16 ADMIRAL PERRY PLAZA, LLC,

Plaintiff,

-against-

DECISION & ORDER
Index No. 514454/2020

Oral Argument: 9-1-2022
Cal. No. 19, MS 5

16 ADMIRAL PERRY PLAZA LLC, FRANCIS PACHESA, BRUNHILDA PACHESA, JABA REALTY HOLDINGS LLC, LUCY PELLEGRINO, CITI ABSTRACT INC., UNIVERSAL ASSOCIATES INC., U.S. BANCORP COMMUNITY INVESTMENT CORPORATION and U.S. BANK NATIONAL ASSOCIATION, as Trustee for VELOCITY COMMERCIAL CAPITAL LOAN TRUST 2018-T,

Defendants.
-----X

The following papers having been submitted on this Motion:

Notice of Motion, Affirmation/Affidavit in Support	1, 2
Affirmation/Affidavit in Opposition	3
Affirmation in Reply	4

Defendants JABA REALTY HOLDINGS LLC and LUCY PELLEGRINO

(Hereinafter as "Defendants") have moved for summary judgment of dismissal of this action pursuant to CPLR 3212 and for the cancellation of the Notice of Pendency of

Action pursuant to CPLR 6514(a). Plaintiff opposes this motion. Plaintiff has brought this action based on fraud as a result of the completion of a fraudulent real estate transaction. The remaining Defendants have not responded to this motion and have stated no position thereon.

In issuing this Decision and Order, the Court has considered Documents numbered as 135 through 150 and Documents numbered as 167 through 178 on the NYSCEF folder for this action.

Defendants, on the record during the oral argument of this motion, did voluntarily withdraw that portion of their motion which asserted that Plaintiff is collaterally estopped by a prior Order of the Court from opposing their motion. Defendants did further voluntarily withdraw that portion of their motion which asserted that Plaintiff lacked the necessary standing to commence and to prosecute this action, acknowledging that this defense has been waived by them as a result of their failure to plead this defense in their initial responsive pleading.

Defendants argue that this action must be dismissed as a result of the fact that Plaintiff has failed to commence this action within six (6) years following the date on which her cause of action for fraud accrued, as is required pursuant to CPLR 213(8). Defendants further argues that Plaintiff cannot rely on the exception provided by CPLR 213(8) for causes of action grounded in fraud which allows for the commencement of such causes of action within two (2) years following the date on which Plaintiff discovered the fraud or could have reasonably discovered the fraud because, Defendants assert, Plaintiff failed to exercise sufficient due diligence which would have led to the discovery of the fraud. Defendants assert that, notwithstanding prior Orders of the Court,

they have presented further grounds and argument requiring the dismissal of this action on limitations grounds.

Plaintiff submits that she discovered the fraud only on August 9, 2018, a date not in excess of two (2) years prior to the commencement of this action, that she could not have reasonably discovered the fraud prior to that date and that, in any event, the question of when a plaintiff discovered or should have discovered fraud for the purpose of the statute of limitations is a question of fact which cannot be resolved summarily.

The Court finds that the additional grounds and arguments allegedly presented by Defendants do not change the fact that the question of when Plaintiff could have reasonably discovered the fraud that was allegedly perpetrated against her is a mixed question of law and fact which cannot be summarily decided by motion. As such, Defendants' motion to dismiss this action based on statutory limitations grounds is denied. In reaching this finding, the Court does not rely on the doctrine of "law of the case."

Defendants argue that summary judgment of dismissal of this action must be granted due to the fact that Plaintiff has failed to plead its cause of action for fraud against Defendants with sufficient detail as is required pursuant to CPLR 3016(b). Plaintiff argues that she has, indeed, sufficiently pleaded its cause of action for fraud against Defendants with proper factual detail. Furthermore, Plaintiff submits that, due to the fact that the circumstances constituting the fraud are peculiarly within the knowledge of Defendants, the pleading requirements of CPLR 3016(b) are less stringent.

The Court notes that Defendants have failed to submit any sworn allegations of fact based upon personal knowledge in support of their motion. Therefore, Defendants

have not carried their burden of proving entitlement to summary judgment of dismissal for the failure of Plaintiff to sufficiently plead causes of action grounded in fraud.

The Court further notes that Defendants have not yet been presented for depositions and that discovery has not been completed as to Defendants. CPLR 3212(f) provides that where it appears that facts may exist to oppose a motion for summary judgment but cannot then be stated, a court may deny the motion pending completion of discovery. Therefore, in accordance with CPLR 3212(f), that portion of Defendants' motion seeking summary judgment of dismissal of this action for the failure of Plaintiff to comply with the pleading requirements of CPLR 3016(b) is denied without prejudice and with leave to renew following the completion of discovery.

Defendants' motion for the cancellation of the Notice of Pendency of Action pursuant to CPLR 6514(a) is denied without prejudice and with leave to renew following the completion of discovery.

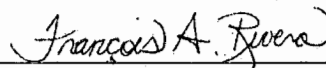
IT IS HEREBY ORDERED that for all of the foregoing reasons,

Defendants' motion for summary judgment of dismissal of this action pursuant to CPLR 3212 is denied, and

Defendants' motion for the cancellation of the Notice of Pendency of action pursuant to CPLR 6514(a) is denied.

The foregoing constitutes the Decision and Order of this Court.

ENTER:



J.S.C.